

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AVIGAIL YEBRA

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 230,558

ORDER

Claimant appeals from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on July 14, 1998.

ISSUES

The Special Administrative Law Judge denied benefits based on the finding that the Injury/Illness Information report of April 7, 1997, does not constitute written claim. Claimant requests review of that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Special Administrative Law Judge should be reversed.

The issue raised on appeal, whether claimant made timely written claim, is a jurisdictional issue subject to review by the Appeals Board.¹

Claimant was injured on Saturday, April 5, 1997, when struck by a loaded pallet jack. She was taken by company car to the emergency room where she complained of pain in the right scapular area. On Monday, April 7, 1997, claimant's supervisor sent her to the company nurse who filled out an Injury/Illness Information form based on information claimant provided. Claimant testified that she thought the Injury/Illness Information form was for workers compensation, that she had completed the requirements necessary to seek workers compensation benefits, and that she signed other papers besides that form, but does not recall what the other papers were for.

¹ K.S.A. 1997 Supp. 44-534a; K.S.A. 1997 Supp. 44-551

Rhonda Shipley, the nurse manager at respondent, testified that the Injury/Illness Information form is filled out for OSHA purposes, is the only form used in the health service department, it remains with the medical records, and no copies are routed to other departments. She also testified that her department does not start workers compensation claims.

The company nurse did, however, refer claimant to Dr. Myron J. Zeller for treatment. Dr. Zeller's records suggest claimant was treated for a workers compensation injury. Dr. Zeller treated claimant through April 17, 1997, and then released claimant to full duty. Claimant did not seek any further treatment and did not submit anything else which might be considered a written claim, until her Application for Hearing in January 1998, for more than 200 days after the last compensation (medical treatment) provided. Claimant concedes that if the documents completed in April 1997 were not a timely claim, claimant has not made a timely written claim as required by K.S.A. 44-520a.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it. Craig v. Electrolux Corporation, 212 Kan. 75, 510 P.2d 138 (1973). The same purpose or function has, of course, been ascribed to requirement for notice found in K.S.A. 44-520. Pike v. Gas Service Co., 223 Kan. 408, 573 P.2d 1055 (1978). Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 309 P.2d 681 (1957), the Kansas Supreme Court described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The form claimant signed in April 1997, titled "Injury/Illness Information," contained a description of the accident and injury. Certainly it satisfied the purpose of allowing respondent the opportunity to investigate. Whether the claimant intended by this form to ask for compensation is a more difficult question. The Board concludes, however, that claimant did intend to be asking for compensation. Claimant testified that when she completed paperwork with the company nurse, including this form, she believed she was doing so for the purpose of obtaining workers compensation. That she would think so is not surprising in light of the fact she, at the same time, was being referred for the workers compensation benefit of medical treatment.

The Appeals Board, therefore, concludes the document claimant signed in April 1997 should be treated as a written claim and written claim was, therefore, timely.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on July 14, 1998, should be, and the same is hereby, reversed. Respondent shall provide a list of three physicians with one to be chosen by claimant to provide authorized medical care.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Gregory D. Worth, Lenexa, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director